

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

VINCE RANALLI, on behalf of himself and
all others similarly situated,

2:21-CV-00088-RJC

Plaintiff,

v.

ELECTRONICALLY FILED

ZAZZLE INC.; ETSY.COM, LLC; BRAVE
NEW LOOK; and OUTDOOR RESEARCH,

ORAL ARGUMENT REQUESTED

Defendants.

**ETSY’S RULE 12(b)(6) MOTION TO DISMISS PLAINTIFF’S FIRST AMENDED
COMPLAINT**

AND NOW comes Defendant Etsy, Inc., incorrectly sued as Etsy.com, LLC (“Etsy”), by and through its counsel, Tucker Arensberg, P.C. and Paul Hastings LLP, and files this Rule 12(b)(6) Motion to Dismiss Plaintiff’s First Amended Complaint, averring as follows:

1. Plaintiff Vince Ranalli (“Plaintiff”) brings forth this class action suit following his alleged internet purchase of protective face masks or coverings from Etsy. *See generally* First Amended Complaint (“FAC”) (Dkt. 59).

2. Plaintiff’s theories of liability are based upon the assertion that Etsy improperly charged him, and others, sales tax as part of their purchases of face masks or face coverings. *Id.* ¶¶ 9-17.

3. Plaintiff alleges that Etsy’s imposition and collection of sales tax was improper, as the masks and coverings were reclassified as everyday wear/clothing due to the COVID-19 pandemic by the Pennsylvania Department of Revenue and thus exempt from Pennsylvania sales tax under 72 P.S. § 7204. *Id.*

4. Plaintiff asserts the following Counts against Etsy on behalf of himself and all others similarly situated: Count IV – Violations of Pennsylvania’s Unfair Trade Practices and

Consumer Protection Law (“UTPCPL”), solely against Etsy as an individual defendant; Count VII – Violations of Pennsylvania’s Fair Credit Extension Uniformity Act (“PFCEUA”) and UTPCPL against all defendants; Count IX – Misappropriation/Conversion against all defendants; and Count X – Unjust Enrichment against all defendants.

5. For the following reasons, set forth in detail in Etsy’s *Memorandum of Law in Support of Motion to Dismiss First Amended Complaint*, which is incorporated in full herein, Plaintiff’s claims fail and his case must be dismissed in full with prejudice or stayed.

6. First, Plaintiff’s UTPCPL claims fail as a matter of law, because Etsy was not engaged in any trade or commerce, and because Plaintiff has failed to plead actionable misrepresentation or deceptive conduct, justifiable reliance, or ascertainable loss.

7. Second, Plaintiff’s common law claims (*i.e.*, for conversion/misappropriation and unjust enrichment) are barred.

8. Third, Plaintiff’s PFCEUA claim fails as matter of law.

9. Fourth, Plaintiff’s claims are barred by the voluntary payment doctrine.

10. Fifth, Plaintiff’s class action claims should be stricken.

11. Sixth, Plaintiff’s claims for punitive damages should be dismissed.

12. Finally, any stay issued by this court concerning the Pennsylvania Department of Revenue’s primary jurisdiction should apply to all defendants, including Etsy.

WHEREFORE, Defendant Etsy respectfully requests that this Honorable Court grant its motion and dismiss or stay Plaintiff’s case in accordance with Etsy’s Proposed Order of Court.

Respectfully submitted,
Dated: June 11, 2021

/s/ Gary Hunt

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*Attorneys for Defendant Etsy, Inc., incorrectly
sued as Etsy.com, LLC*

CERTIFICATE OF CONFERRAL

The undersigned counsel certifies that, in accordance with this court’s order of January 21, 2021 (Dkt. 4), on April 5, 2021, counsel for Etsy made good faith efforts to meet and confer via telephone with counsel for Plaintiff to determine whether certain pleading deficiencies in the original Class Action Complaint could be cured by amendment. Counsel for Plaintiff indicated he might file an amended complaint, but did not specify the timing of that complaint, and that Plaintiff would likely oppose a motion to dismiss. Etsy filed its motion to dismiss the original Class Action Complaint on April 9, 2021. After seeking and receiving leave from the court, Plaintiff filed its First Amended Complaint (“FAC”) on April 22, 2021. The FAC addressed some (but not all) of the pleading deficiencies that Etsy has identified. On June 9, 2021, counsel for Etsy again conferred with counsel for Plaintiff regarding the deficiencies in the FAC, and discussed Judge Horan’s recent decision in *McLean v. Big Lots*. Counsel for Etsy indicated that he would not withdraw the FAC. As a result, Etsy has filed this motion to dismiss the FAC.

Respectfully submitted,

Paul Hastings LLP

BY: /s/ Kevin P. Broughel.
Kevin P. Broughel
**Attorney for Defendant Etsy, Inc., incorrectly
sued as Etsy.com, LLC**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on June 11, 2021, a true and correct copy of **ETSY'S**
RULE 12(b)6 MOTION TO DISMISS PLAINTIFF'S FIRST AMENDED COMPLAINT
was filed with the Clerk of Courts using the CM/ECF system which will send notification of such
filing to all counsel of record. This document was filed electronically and is available for viewing
and downloading from the ECF system.

Tucker Arensberg, P.C.

BY: /s/ Gary Hunt.

Gary Hunt

**Attorney for Defendant Etsy, Inc., incorrectly
sued as Etsy.com, LLC**